second defendants may properly be imputed a fraudulent intention to commit any illegality. An appeal is by way of rehearing and as already stated, this court has powers under section 69 of the Courts of Judicature Act to make any order which ought to have been given or made, notwithstanding, as here, that the notice of appeal relates only to part of the decision and although any of the respondents or parties has not appealed from or complained of the decision. At the time when the agreement was made the Land Code (F.M.S. Cap. 138) was in force and there is authority for saying that contracts of the type made in this case suffered from no taint of illegality: see *Malaya Borneo Building Society Ltd.* v. *Ramachandran.*[2] Nor, so far as I am able to advise myself, does any such taint attach to the transaction under any of the provisions of the National Land Code 1965. Such being the case, the agreement of April 13, 1960 must be held valid. The only impediment to a transfer by way of specific performance as prayed in the counterclaim, is a requirement of the necessary permission. In the circumstances I think the application for such permission may be made by the first defendant, supported by a copy of this judgment as grounds of her application and by virtue of the agreement. In the event of permission being granted and the plaintiff failing after 14 days of notice received to execute a registrable transfer the Assistant Registrar of this court is to do so in her place and call for surrender of the issue document of title by the plaintiff.

Should permission, however, be refused, the first defendant should be entitled alternatively to damages — being the amount of the first defendant's outlay expended in developing the land. This may be ascertained upon inquiry by the Assistant Registrar, but in order to save costs, we assess the amount of such damages at $7,500, plus the $149.50 advanced. The first and second respondents will also be entitled to the costs of this appeal.

Gill and **Ali F.JJ.** concurred.

Appeal dismissed; Counterclaim allowed.

Solicitors: *Atma Singh Gill & Co.; Michael Chong Ngian Fong & Co.; Lee Boon Peng.*

PUBLIC PROSECUTOR v. STRAITS TIMES (MALAYA) BHD.

[O.Cr.J. (Abdul Hamid J.) October 9, 1970]

[Kuala Lumpur — Criminal Application No. 18 of 1970]

Criminal Law and Procedure — Contempt of Court — Publication in newspaper — Allegation that publication would prejudice and embarrass Public Prosecutor in exercise of his statutory functions and also prejudice fair trial — No pending proceedings.

The Public Prosecutor applied in this case for leave to issue a writ or writs of attachment for contempt of court on the respondents for publication of articles in *The Straits Times.* The grounds upon which relief was sought was that "the publications of the said articles contain matters which are tendencious and constitute contempt of court, because they are prejudicing and embarrassing the applicant in the exercise of his statutory functions and also prejudicing a fair trial concerning the circumstances of the death of one Robert Lee."

Held: (1) there was no valid reason why the applicant should be prejudiced or embarrassed in the exercise of his statutory functions, and it was not alleged that the articles were not fair and accurate reports of an incident which occurred in a public place;

(2) the allegation of prejudice to a fair trial was wholly unrelated to and indeed did not refer to a pending trial and therefore there was nothing in the articles which could be said to be calculated to interfere or obstruct or have a tendency to interfere with or obstruct the due administration of justice.

Cases referred to:-

(1) *Public Prosecutor* v. *Abdul Samad* [1953] M.L.J. 118.

(2) *Re Sin Poh Amalgamated Ltd. & Ors.* [1954] M.L.J. 152 at p. 153.

(3) *In re H.E. Kingdon* v. *S.C. Goho* [1948] M.L.J. 17 at p. 18.

(4) *Ambard* v. *Attorney-General of Trinidad & Tobago* [1936] M.L.J. 117 at p. 119.

(5) *R.* v. *Evening Standard Co.* [1954] 1 Q.B. 578.

(6) *Re Dunn* [1906] Vict. L.R. 403.

(7) *James & Ors.* v. *Robinson* (1963) 109 C.L.R. 593.

CRIMINAL APPLICATION.

Dato Sheikh Abdul Rahman (Mokhtar bin Sidin with him) for the applicant.

M. Shanker for the respondents.

Cur. Adv. Vult.

Abdul Hamid J.: This is an application by the Public Prosecutor asking for leave to issue a writ or writs of attachment for contempt of court on the respondents for the publication of articles in *The Straits Times* on the 25th, 26th and 27th days of August, 1970, under the headings "Assault of engineer; I.G.P. orders probe"; "Doctors fight to save Robert's life" and "Engineer hurt in bar assault dies in hospital" respectively. The grounds upon which the relief is sought —

"are that the publication of the said articles contain matters which are tendencious and constitute contempt of court, because they are prejudicing and embarrassing the applicant in the exercise of his statutory functions and also prejudicing a fair trial concerning the circumstances of the death of one Robert Lee."

These articles are attached to the affidavit of the applicant and it is unnecessary for me to reproduce them here.

Dato Sheikh Abdul Rahman, Senior Federal Counsel appearing for the Public Prosecutor, submitted that these articles embarrass the police and the Public Prosecutor because of the alleged involvement of a police officer, and their effect is to force the hands of the prosecution to take action. He further submitted that they have a tendency to prejudice a fair trial. He pointed out that as death was caused, an inquest will at least have to be held and that means a judicial officer will have to inquire.

The learned counsel said that the word assault used in the articles connotes an unlawful and violent act, and that reference to the commotion suggests that Mr. Lee tried to calm down the crowd. It is argued that the report concerning Mr. Lee's scholastic achieve-

ments and previous episodes where he narrowly escaped death in a gun battle with four armed robbers in a private club in Jalan Pasar in an attempt to prevent an armed robber has the effect of creating an image that Mr. Lee was upholding the rule of law. It is also alleged that these articles reported conclusions — matters which have to be decided by a court, and although there may not be an intention to prejudice a fair trial, it did however have a tendency to that effect.

I do not think that it is reasonable to construe these words as having any special meaning. There is no dispute that the reports do reveal that there had been an assault, a commotion and firing of a shot and that allegedly, a police officer was involved. But these facts are not challenged. As regards the previous episode encountered by Robert Lee there is nothing to show that this was not true. Further it is not uncommon for newspapers to publish matters concerning scholastic achievement of and other good deeds rendered by a person on his death particularly if the dead person enjoys a certain standing in the community or he is in one way or another related to any prominent personality. For that reason it is unreasonable to isolate certain passages from the reports and construe them unfavourably or to impute improper motive on the publisher. What may appear to be an embarrassment or prejudicial if that part is read in isolation may not be so if the reports are read as a whole taking into account the circumstances surrounding such publication particularly if it relates to a matter which will promote public sensation or a matter of unusual occurence.

Dealing with the law the learned Senior Federal Counsel urged me to apply the principles in *Public Prosecutor* v. *Abdul Samad*.[1] In that case, an application was made by the Public Prosecutor —

"for writs of attachment against the editor and the printer and publisher of the 'Majlis' for contempt of court. The newspaper had published a report of a motor accident in which one Muniandy had knocked down a Malay school boy outside his school. The publication alleged that the driver was driving at an illegally high speed, and that he caused the accident by such speed, as shown by the brake marks and position of the car. It also called the attention of the public to the views of the U.M.N.O. Branch Committee relative to the need for traffic control at the Malay school and at all schools with premises abutting on to the public highway. After publication, a summons was issued against Muniandy to appear in a magistrate's court to answer a charge of negligent driving. At the hearing *inter partes*, the respondents raised the defence that the publication did not amount in law to contempt unless proceedings were 'pending'. Further, on the facts, it was pointed out that the purpose of the publication was to draw attention to the views of the U.M.N.O. Branch Committee for more traffic control. **Held:** (1) following the general principle laid down by Wills J. in *R.* v. *Parke* [1903] 2 K.B. 432 and to some extent the special principle in *R.* v. *Davies* [1945] 1 K.B. 435, contempt would be committed where it was known at the time of the publication that police investigation was proceeding and that a prosecution was, at the very least, under consideration, even though no one had been officially accused of the offence; (2) the publication went further than merely calling attention to the need for special traffic controls at schools. It is clear that it was calculated to affect the course of proceedings then imminent." [1 *Mallal's* Digest of Malaysian and Singapore Case Law, 3rd edition p. 352, paragraph 2387].

The learned counsel also referred to the case of *Re Sin Poh Amalgamated Ltd. and Others*[2] where Murray-Aynsley C.J. said —

"Propaganda in favour of one side or the other may affect public opinion and excite popular prejudice. If ultimately the result of the proceedings is not in accordance with the prejudice so excited the result is likely to cause the public to lose confidence in the courts."

He proceeded to cite the case of *In re H. E. Kingdon* v. *S. C. Goho*[3] where Brown J. said —

" 'Contempt of court' covers a wide range of omissions and commissions, from the failure to obey a judgment or order of the court to what Lord Hardwicke in *In re Read and Ruggonson* (1742) 2 Atk. 291 at p. 469, described as 'scandalizing the court itself'. The former is an example of what is known as ordinary contempt. The latter is special contempt. And within the category of special contempt come newspaper articles which tend to prejudice the fair trial of a case, and acts done or writings published which are calculated to bring a judge into contempt or to lower his authority. But the root principle on which this inherent power to punish for contempt is founded, and the purpose for which it must be exercised, is not to vindicate the dignity of the individual judge or other judicial officer of the court itself, but to prevent an undue interference with the administration of justice in the public interest."

The respondents in their affidavit state that —

(a) It has not been their intention to commit any contempt of court and to the best of their knowledge the said articles did not amount to and cannot on any reasonable construction be said to amount to any contempt as alleged;

(b) The said articles represent a fair and accurate report of matters which they believe to be of public interest and public concern;

(c) There is nothing in the articles which in any way tended or was calculated to interfere with or prejudice any trial;

(d) At the time these articles were published no proceedings were pending before any court; and

(e) No arrest had then (or on this date) been effected and that though investigation had commenced no proceedings were imminent.

The respondents' contention in (c), (d) and (e) are of substance and merit careful consideration by this court.

In his submission, Mr. Shanker, counsel for the respondents, said that this matter raises an issue of paramount national importance touching upon the issue of legal limits of freedom of speech and expression as enshrined in article 10 of the Federal Constitution. The importance of the issue can hardly be denied. Nevertheless it should not I think be magnified. Our Constitution clearly provides that Parliament may by law impose restrictions to provide against contempt of court a safeguard against the abuse by a citizen and the press and its relationship to the administration of justice was, I think, properly described by Mark Carlisle, M.P. in [1969] *Criminal Law Review* 109-164 p. 124 when he said —

"A free press is the halmark of democracy. But so is the right of an individual to a fair trial and his right to the protection of his reputation. The continuance of that democracy may in part depend on the right of the State to prevent the publication in that free press of information whose publication it considers would be prejudicial to the public interest.

The relationship between the press and the administration of justice is controlled by our laws as to contempt of court; . . . ."

It is therefore not unreasonable to expect a —

"free press, in exercising its right and performing its duty to demonstrate a high standard of performance. If a newspaper should temporarily lapse from this high standard the courts step in quickly to administer condign punishment. Insofar as the law of contempt is concerned, the press does not enjoy any particular privilege nor suffer any particular disability." [See *Grey* [1900] 2 Q.B. p. 36 at p. 40 — Lord Russel C.J.].

It may not perhaps be out of place to quote a passage from the memorable judgment of Lord Atkin in *Ambard, Andre Paul Terence* v. *Attorney-General of Trinidad & Tobago*[4] when he said —

"... no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

This passage, I think, provides an illustration of the court's endeavour to hold the scales evenly between the freedom of the press on the one hand and abuse of that freedom on the other.

Mr. Shanker submitted that the power to punish for contempt must only be exercised where the breach is flagrant and that it should be exercised with the greatest of caution. I am also reminded of a passage from the judgment in *Ambard's* case, *supra*, which states —

"that to justify a committal for contempt of court there must be evidence in the article itself taken as a whole, that the publisher has acted with untruth or malice, or that he imputed improper motives to those taking part in the administration of justice."

That may be true but the court should not lose sight of the fact that —

"even though the publication of a matter was due to a genuine mistake on the part of a reporter and that it was published in good faith with no intention to interfere with the course of justice, the publication of such matter may constitute contempt of court if the publication of that matter might interfere with the course of justice." [*R.* v. *Evening Standard Company*[5]].

In dealing with this application, it is important to appreciate clearly what in law is meant by "contempt of court." *Archbold's* Criminal Pleading Evidence and Practice defines contempt of court as follows —

"The essence of contempt of court is action or inaction amounting to interfere with or obstruction to, or having a tendency to interfere with or to obstruct the due administration of justice." [See *Re Dunn*[6]].

At this point, let me pause in order to emphasize that the Public Prosecutor is alleging that the articles are tendencious and constitute contempt of court on grounds that they are —

(a) prejudicing and embarrassing the applicant in the exercise of his statutory functions; and

(b) prejudicing a fair trial concerning the circumstances of the death of one Robert Lee.

Referring to the affidavit, Mr. Shanker submitted that nowhere has it been alleged that any of the statements contained in these publications is untruthful, or malicious, or that it misreported matters or imputed improper motives to those taking part in the administration of justice. Furthermore the applicant does not seem to challenge that the articles are a fair and accurate report of an incident which occurred in a public place.

The first ground upon which the Public Prosecutor is relying speaks of prejudice and embarrassment to him in the exercise of his statutory functions. Presumably and indeed he must be referring to the exercise of his functions in criminal matters. The law seems to vest upon the Public Prosecutor the power to control and direct criminal prosecutions including the power to direct inquiries of death and other proceedings under our Criminal Procedure Code. It is therefore clear that in exercise of his functions in criminal matters, the Public Prosecutor plays an indispensable role in the administration of justice in this country. Nevertheless, a publication which embarrasses and prejudices the Public Prosecutor in the exercise of his statutory functions may not necessarily constitute contempt of court It is for the court to consider whether there was something done amounting to interference with or obstruction to or having a tendency to interfere with or to obstruct the due administration of justice.

The affidavit of the applicant does not seem to state in what way the Public Prosecutor is prejudiced or embarrassed in the exercise of his statutory functions. The learned Senior Federal Counsel however submitted that the Public Prosecutor and the police were embarrassed by the alleged involvement of a police officer and that the effect of these articles was to force the hands of the Public Prosecutor to take action. It is common ground that at the time of the publication, the investigation was in progress and the articles purported to report an incident which occurred in a public place. It is not suggested that the report was inaccurate and there appears to be no suggestion that any particular police officer was involved or for that matter the identity of any particular assailant.

Proceeding on the basis that these articles have given a correct report of the incident and that only police investigation was then in progress, it seems highly unlikely that at the time of the publication the Public Prosecutor was required to exercise his functions in the sense that he had to decide whether to prosecute or otherwise for obvious reasons that the matter had not gone beyond police activity.

I have had the advantage of reading these articles and after doing so with an open mind, I am unable to see how these reports could produce the effect alleged, or, could be said to have a tendency to interfere with the exercise of the Public Prosecutor of his functions.

Assuming however that the Public Prosecutor was embarrassed or prejudiced in the exercise of his functions, was it enough to constitute contempt of court? It is, I think, necessary to determine this issue in the light of the rule that there cannot be a contempt of court unless judicial proceedings are pending. Similar consideration should apply to the allegation by the Public Prosecutor that these articles tend to prejudice

a fair trial. Here I wish to examine the words used by the applicant in the affidavit. To my mind he does not appear to be referring to a trial in the proper sense of the word. The affidavit states —

"The said reports contain matters which are tendencious and constitute contempt of court because they are ... prejudicing a fair trial concerning the circumstances of the death of the said Robert Lee."

It is my impression that the applicant is not referring to the trial of any particular person who is charged or is arrested with a view to being charged, but to a trial concerning the circumstances of the death of Robert Lee. I am unable to understand what the applicant intends to allege. Presumably the applicant is referring to an inquiry concerning the circumstances of the death of Robert Lee. In the submission by the learned Senior Federal Counsel, he did suggest that at least an inquest will have to be held where a judicial officer shall inquire into the death of Robert Lee. If that be the case, and indeed if my assumption is correct, the applicant could not therefore be alleging that these articles prejudice a fair trial. Is an inquest a trial? An inquest is a proceeding under the Criminal Procedure Code. It means an inquiry by a magistrate with a view to record a finding as to the cause of death and to any of the circumstances connected therewith with regard to which the Public Prosecutor may have directed a magistrate to make inquiry. The language used under the relevant provision in the Criminal Procedure Code clearly reveals that an inquest is not, by any stretch of the interpretation, a trial. In a criminal trial a charge is preferred against a particular person. The charge is a necessary element in a criminal trial.

Mr. Shanker quite properly submitted that it is not averred by the Public Prosecutor and there is no evidence before this court that there is any proceeding pending before the court at the time of the publication. The learned counsel cited to me a number of cases which I do not feel disposed to review at length in my judgment. It is sufficient for me to refer to the case of *James and Others* v. *Robinson*[7] cited by the learned counsel — a judgment of the Full Bench of the High Court of Australia. The lengthy judgment of their Lordships Kitto, Taylor, Menzies and Owen JJ., reviewed a number of English cases and dealt with the question of 'pending trial'. To my mind, this case should have great persuasive authority with this court

There it was held —

"That the publication of matter likely to affect a criminal trial is not punishable as a contempt if at the time of publication there are no proceedings commenced in any court."

At page 605 their Lordships said —

"As to the observation of Wills J. '[in *R.* v. *Parke* — [1903] 2 K.B. 432]' that 'in *very nearly all* the cases which have arisen there has been a cause actually begun', we know of no case where publications of the character here in question, made before the commencement of proceedings in any form, have been held to be contempts. What Lord Goddard C.J. obviously meant when in *Reg.* v. *Odhams Press Ltd.* he spoke of a person being punished for contempt 'if the criminal law has been set in motion' was that curial procedures, and not merely police activity, must have been commenced. And when Cotton L.J. in *Hunt* v. *Clarke* spoke of observations being contempt if punished 'pending a cause or before a cause even has begun, he seems to have meant by the cause the hearing of the cause; for he insisted throughout on the necessity of prejudice to the parties in the case. The many cases, of which *R.* v. *Clarke; Ex parte Crippen* is a striking example, in which the courts have been concerned to decide when it is that a cause is pending, are authorities for holding that there cannot be a contempt where no proceedings at all are pending at the moment of the publication complained of."

And at p. 607 their Lordships said —

"If a publication is to constitute contempt at all it must be a contempt at the time it is made, and the person aggrieved must be aggrieved in his capacity of a party to proceedings; therefore he must be a party at that time. It would be an astonishing state of affairs if a person responsible for a publication were to be held guilty or not guilty of contempt according as proceedings should or should not be commenced thereafter."

Mr. Shanker further submitted that even if it is held that proceedings need not be pending, they were not 'imminent' in this case. Referring to *Abdul Samad's* case, *supra*, the learned counsel submitted that Briggs J. did not define what he meant by 'imminent'. It is suggested that by imminent it should mean that "arrest expected hourly" and extremely "high degree of imminence".

In this particular case, it is hardly necessary for me to labour at length on this question considering that there is nowhere suggested by the applicant that the proceedings were pending let alone imminent. In any event, I should like to refer to a passage in *James and Others* v. *Robinson*, *supra*, where at p. 607 their Lordships said —

"We think that in order to constitute contempt of court it must, for the reasons which we have indicated, be concerned with proceedings which are pending in a court in the sense in which that expression has been applied in the cases to which we have referred. Indeed if the imminence of proceedings were to be regarded as sufficient foundation for applications for attachment for contempt in matters of this character — which would, of course, introduce many difficulties and much uncertainty — then there was no reason why the courts should have taken the trouble, as they have done in the many cases mentioned, to examine the significance of the laying of an information or the making of a charge and subsequent arrest."

And Windeyer J. in his judgment in the same case dealing with this question said at p. 617 —

"In England some modifications of the law concerning contempt were made by the *Administration of Justice Act, 1960*. Section 11(1) of that Act was referred to, incidentally, in the Supreme Court. But that provision can have little, if any, weight in the determination of the present question. It alters in one respect the law as stated in *Reg.* v. *Odhams Press Ltd.*; and it perhaps assumes that a publication calculated to interfere with the course of justice could be held to be a contempt if proceedings were at the time imminent. Presumably the word 'imminent' was introduced because of the suggestion made by Lord Hewart C.J. in *R.* v. *Daily Mirror; Ex parte Smith*. It is, however, an imprecise word by which to mark out a period of time. And it seems uncertain whether the imminence of the event is determinable solely by what was expected at the time of publication, or is to be judged by what in fact occurred. The only suggestion I have seen as to the effect of the Act in this respect is in the annotation of it in *Halsbury's Statutes of England*, 2nd ed. vol. 40, p.218. There it is said 'proceedings may be imminent where, for example, no one has yet been charged with a crime but an arrest is hourly expected'. But the only authority for this is an utterance in Parliament, and what a Lord Chancellor speaking in Parliament, says in his legislative capacity, can hardly be used by a court to interpret a statute. The Act may allow courts in England to take a step that I think we cannot take. It may, by an indirect approach, have thus altered the law there. But it has no application in Australia.

Here the law, as I understand it, is that matter published in a newspaper concerning a person against whom no proceedings are pending cannot be a contempt of court."

In the present case, there appears to be no embarrassment or prejudice which could be seen to exist in the matter published which affects or tends to affect the exercise by the applicant of his statutory functions. There appears to be no valid reason why the applicant should be prejudiced or embarrassed in the exercise of his functions. As regards the allegation of prejudice to a fair trial, it is clear that the allegation is wholly unrelated to and indeed it does not in effect refer to a pending trial — a trial of any person or persons charged or who has been arrested with a view to being charged.

In the circumstances of this case, it is my judgment that there is nothing in the articles which is calculated to interfere with or obstruct or have a tendency to interfere with or obstruct the due administration of justice. For these reasons, I dismiss this application with costs.

Application dismissed.

Solicitors: *Shearn, Delamore & Co.*

NIK MOHAMED SALLEH v. TENGKU BESAR ZABIDAH

[F.C. (Azmi L.P., Gill and Ali F.JJ.) October 12, 1970]

[Kota Bharu — Federal Court Civil Appeal No. X. 86 of 1969]

Land Laws — Contract — Sale of land — Agreement by beneficiaries to sell land belonging to deceased — Other beneficiaries not parties to agreement — Agreement enforceable against beneficiaries who entered into agreement — Specific performance — Contracts (Malay States) Ordinance, 1950, ss. 43 and 44 — Specific Relief (Malay States) Ordinance, 1950, ss. 17 and 19.

The second and third defendants and one Nik Ti, since deceased, entered into an agreement for the sale of a piece of land to the respondent. The said land was at the date of the agreement held in the name of Nik Abdul Majid who was the son of Nik Ti deceased, husband of the second defendant and father of the third defendant. The appellant was the administrator of the estate of Nik Ti. Nik Abdul Majid left four other children who were not signatories to the agreement. Subsequently the appellant paid $1,500 to the other beneficiaries of the said land and the land was transferred to him as the administrator of the estate of Nik Ti. The learned trial judge gave judgment in favour of the respondent. The first defendant appealed on the ground *inter alia* that the other beneficiaries of Nik Abdul Majid had not agreed to the transfer and were therefore not bound by the agreement.

Held, dismissing the appeal: the agreement was enforceable against the second defendant, third defendant and the estate of Nik Ti deceased and in the circumstances of the case as the land had become the property of the estate of Nik Ti deceased, the learned trial judge was right in directing the appellant as the administrator of the estate of Nik Ti deceased, to transfer the whole land to the respondent.

Cases referred to:-

(1) *Dunlop Pneumatic Tyre Co. Ltd.* v. *Selfridge & Co. Ltd.* [1914-15] All E.R. Rep. 333.

(2) *Horrocks* v. *Rigby* (1878) 9 Ch. D. 180.

(3) *Abdul Karim Basma* v. *Weekes & Ors.* [1950] 2 All E.R. 146; [1950] A.C. 441.

(4) *Attorney-General* v. *Day* (1749) 1 Ves Sen. 218; 27 E.R. 992.

(5) *Lumley* v. *Ravenscroft* [1895] 1 Q.B. 683.

(6) *Price* v. *Griffith* (1851) 1 De G.M. & G. 80; 42 E.R. 482.

(7) *Thomas* v. *Dering,* 48 E.R. 488.

(8) *Holroyd* v. *Marshall* (1862) 10 H.L.C. 191, 211; 11 E.R. 999, 1007.

(9) *Pundlik Daryaji* v. *Jainarayan Maliram Shop* A.I.R. 1949 Nag. 83.

(10) *Kennewell* v. *Dye* [1949] 1 Ch. 517.

(11) *Siah* v. *Tengku Nong* [1964] M.L.J. 43.

FEDERAL COURT.

C. Jegathesan for the appellant.

Raja Abdul Aziz for the respondent.

Cur. Adv. Vult.

Azmi L.P.: This is an appeal against the judgment of the High Court at Kota Bharu under which the learned trial judge granted the plaintiff's claim for specific performance of an agreement dated 18th November 1948, for the sale to her of a piece of land situated in the township of Kota Bharu by the second and third defendants and one Nik Ti who is now deceased but is represented by the first defendant as the administrator of her estate.

The said land at the date of the agreement was held in the name of Nik Abdul Majid bin Wan Mohamed Tahir who was the son of Nik Ti deceased, husband of the second defendant and father of the third defendant. Nik Abdul Majid died intestate and these three persons are his heirs under Muslim law. Under the agreement, the three persons, to whom I have referred, agreed to sell the said land to the plaintiff at the price of $190 of which $170 was paid when the document was signed, and the balance of the purchase price was to be paid on the registration of the transfer of the land to the plaintiff.

There were provisions in the agreement also for the return of the $170 and payment of damages fixed at $170 to the plaintiff should the three signatories fail to effect the necessary transfer.

The first defendant, as the administrator of the estate of Nik Ti (who also died intestate), disputed the claim and in so doing filed a statement of defence, apparently drafted by a lay man. He denied most of the allegations in the statement of claim, but his long worded statement of defence as to its relevant parts might be summarised as follows:

(1) That the three signatories in the agreement were not the only beneficiaries of Nik Abdul Majid bin Nik Mohamed Tahir deceased and were therefore not entitled either to the whole of the land or to represent all the beneficiaries of the estate of the said Nik Abdul Majid. In fact, Nik Abdul Majid deceased left three other sons and a daughter.

(2) That the agreement was illegal because the three signatories to the agreement were not the registered owners of the land.